

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALZHEIMER’S INSTITUTE	:
OF AMERICA, INC.,	:
	:
Plaintiff,	: Civil Action No.
vs.	: 2:10-cv-6908-TJS
	:
AVID RADIOPHARMACEUTICALS	:
and THE TRUSTEES OF THE	:
UNIVERSITY OF PENNSYLVANIA,	:
	:
Defendants,	:
and	:
	:
UNIVERSITY OF SOUTH FLORIDA	:
BOARD OF TRUSTEES,	:
	:
Intervenor.	:

REPORT and RECOMMENDATION OF THE SPECIAL MASTER

Before this Special Master (SM) is the Court’s March 30, 2015 Order appointing the undersigned SM for the purpose of preparing a Report and Recommendation regarding the amount of reasonable and necessary attorneys’ fees incurred by Defendant Avid Radiopharmaceuticals (Avid) in litigating this patent infringement action against Plaintiff Alzheimer’s Institute of America, Inc., (AIA). The Court directed the SM to recommend the amount of attorneys’ fees to be awarded, pursuant to applicable legal standards.¹ The SM’s Report and Recommendations follow.

¹ The other Defendant, The Trustees of the University of Pennsylvania, withdrew from any request for counsel fees.

Background

On March 30, 2015, the Court issued a Memorandum Opinion awarding attorneys' fees to Avid pursuant to 35 U.S.C. ¶285 finding this matter to be an exceptional case under Octane Fitness, LLC v. Icon Health & Fitness, Inc., 134 S.C. 1749 (2015) which held an "exceptional case is simply one that stands out from others with respect to the substantive strength of a party's litigating position or the unreasonable manner in which the case was litigated".

At trial, the jury rendered a verdict in favor of Avid by finding the Plaintiff, Alzheimer's Institute of America, Inc. (AIA), was not the owner of the rights of a patent upon which it predicated an infringement action. The jury further found the University of South Florida (USF) had not waived its ownership rights in the subject invention. It also determined that an individual named John Hardy (Hardy) had not been disclosed on the patent application as a co-inventor. The issue of patent infringement was not litigated before the jury.

After the trial and the jury's finding, the Court found the evidence at trial demonstrated Ronald Sexton (Sexton), AIA's principal, had conspired with Hardy and Michael Mullan (Mullan) to defraud USF and Imperial College in London of their ownership rights in the invention, by their agreement not to list Hardy as a co-inventor to the patent application. The Court also ruled the evidence presented at

trial clearly supports a finding that Sexton, Hardy and Mullan conspired to misrepresent the true ownership of the invention in an effort to insure the ownership of those inventions could not be claimed by Imperial College and/or USF. The Court further found AIA knew when it brought this action it was not the legal owner of the patent. The Court made the additional finding that AIA's conduct along with others "undoubtedly constitutes bad faith".

In support of its Motion for attorneys' fees under 35 U.S.C. ¶285, Avid cites Federal Rule of Civil Procedure 54(d)(2)(B)III which requires movant to state the amount of attorneys' fees sought or to provide a fair estimate thereof. Avid claims it has "conservatively" claimed its estimated attorneys' fees to be "approximately" \$6,508,687.00 and submitted a declaration by L. Scott Burwell, Esquire in support of its Motion.

The final dollar figure which Avid requested is \$6,867,219.31 which it claims is the value of the work on the case from the inception of this case to April 16, 2013. The period includes attorneys' fees incurred in pre-trial, trial and post-trial work but does not include activities related to the appeal or other activities subsequent to the hearing on AIA's Motion for judgment as a matter of law.

In further support of its request, Avid submitted 333 pages of chronological billing for the Finnegan firm; 56 pages of chronological billing for the Pepper firm; and 13 pages of billings for the Hogan, Lovells firm. The breakdown of the

request is \$6,428,259.50 for Finnegan, \$266,844.00 for Pepper and \$172,115.81 for Hogan, Lovells.

The SM has also reviewed approximately 2,500 pages of Motions, Memoranda and Exhibits, letters, and notes of testimony created or submitted in the request for attorneys' fees and all of the opposition papers submitted by AIA as well as the Docket entries in this matter, which number in excess of 400, and several motions and ruling which had been filed.

The SM conducted a Settlement Conference / Mediation Conference as suggested in the Court's Order with no success.

Additionally, the SM held 2 days of hearings The SM scheduled an on the record hearing which took place on September 10 and 11, 2015 for the purpose of hearing any general objections and specific objections to Avid's fee request which Plaintiff wished to submit.

On or about September 1, 2015, AIA submitted an extensive list of general objections and specific objections which will be discussed infra. Avid was ordered to be able to respond to these objections during the course of the hearing which took place on September 10 and 11, 2015. It was the intent of the SM to hear arguments from both sides on these exceptions.

Special Master's Background

At the outset, it is incumbent on the undersigned to relate the SM has 44 years of experience in litigation in the City of Philadelphia in both the Federal and State Courts. This experience includes 18 years as a trial judge in the Court of Common Pleas with the last 5 years in the Commerce Court Division conducting and managing complex civil litigation. Many of the cases handled contain requests for counsel fees.

After retiring from the Court, the SM spent 10 years as a partner in a major law firm managing and supervision complex litigation including supervising a patent case which was taking place in the California Federal Court. During his period in the major law firm, the SM was a billing attorney on many cases and liaised with several general counsel of large corporations. The SM is thoroughly familiar with billing rates for lawyers in and around the City of Philadelphia and all the courts in the area.

Applicable Law

An award of attorneys' fees and costs pursuant to 35 U.S.C. § 285 is an issue unique to patent law and therefore subject to Federal Circuit law. Special Devices, Inc. v. OEA, Inc., 269 F.3d 1340, 1343 (Fed. Cir. 2001). As such, calculation of an award for the attorneys' fees and costs sought in the Section 285 Petition is

governed by Federal Circuit law. The parties in this case both agreed Federal Circuit law applied.

The court should exclude from its fee calculation any hours not reasonably expended on the litigation. The district court also should exclude from this initial fee calculation hours that were not reasonably expended. Cases may be overstuffed, and the skill and experience of lawyers vary widely. Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise Hensley v. Eckerhart, 461 U.S. 433. The trial court may draw on its experience and judgment to eliminate unreasonable hours and charges from a fee request. It is well within the special master's discretion to reduce the hours to a number that, in his experience and judgment, was reasonable for the work done. Saxton v. Secretary of Department of Health and Human Services 3 F.3d 1517 (Fed.Cir.1993).

The methodology of assessing a reasonable award of attorneys' fees and costs under 35 U.S.C. § 285 is within the discretion of the district court. Mathis v. Spears, 857 F.2d 749, 754 (Fed. Cir. 1988). It must be remembered the determination of counsel fees is a factual question for the court.

Initial General Impressions

Before a discussion on the general and specific objections which were argued, it is clear to the SM that Avid was extravagant in the employment of legal

resources to mount its defense against AIA. It appears from reading and reviewing the time sheets, no expense was spared. During the hearing with the SM it became clear no hourly expense was questioned. The number of lawyers and administrative personnel assigned to a specific tasks also seemed to be unquestioned by Avid.

The SM cannot say, in view of the lawyer and non-lawyer time expended, resources were squandered, because they did achieve a positive result for Avid. The SM can say Avid was willing and able to send, and did send, a large force to do what a much smaller unit would be capable of accomplishing. A reasonable counsel fee will award what was necessary and reasonable, not necessarily for what was actually listed in the time sheets.

It must be remembered at an early stage in the proceeding, the main issue which needed to be determined was the ownership (validity) of the patent and not the other major issues in patent cases such as infringement and damages.

The SM initially perused the time sheets submitted and decided a most helpful method to make a determination of a reasonable fee would be to order AIA to specifically object to the request for fees in categories or work with which it was familiar. AIA complied with a fully detailed presentation with 21 accompanying exhibits which parsed Avid's time sheets for particular issues.

After the general and specific objections were submitted and the hearing was held, the SM reviewed and scrutinized each of these exhibits which were comprised of the time sheets encompassing the objections.

General Objections

1. The first general objection is the counsel fee request submitted by Avid is excessive and unreasonable. AIA states the \$6,867,217.31 sought by Avid is patently unreasonable. The amount is well in excess of the median attorneys' fees incurred in defending an entire patent infringement case through a jury trial. This objection is overruled because the AIPLA Survey lists the average cost of a patent defense may run as high as \$5,500,000.00 to \$6,000,000.00 for a claim which might result in damages in excess of \$25,000,000.00. In determining the amount involved, AIA self-servingly attempted to value the case somewhere between \$1,000,000.00 and \$10,000,000.00.

However, Avid cited a letter signed by an AIA lawyer which states the market for a successful Alzheimer's drug could be as high as \$20,000,000.00 per year. It demanded a settlement 2 months before trial of \$18,300,000.00 upfront and \$25,000,000.00 per drug candidate approved for market. After further discussion, the SM concluded Avid was justified in thinking it was facing an exposure in excess of \$25,000,000.00 and therefore the AIPLA survey supports a finding the request for counsel fees was not *obviously* excessive. It is well known

the more money that is at risk the more expensive is the litigation. The conclusion in dealing with this objection leaves the SM with the task of dealing with the fee request with a closer look than merely a wholesale cutting of fees.

2. AIA complains “Avid’s time entries reflect severe overstaffing and overbilling. Avid’s billing documentation is rife with excess inefficiency. Avid staffed this case with more 35 lawyers, 25 of them from Finnegan. No less than 18 lawyers – 14 from Finnegan – billed more than 100 hours in the case. Such stark overstaffing inevitably leads to severe inefficiencies”, AIA noted. This general objection is overruled but it did signal the SM to examine carefully the specific objections which were raised.

3. AIA complains Avid’s approach to trial staffing is representative of Avid’s excessive and wasteful approach throughout this litigation. Avid’s submission reflects 12 to 15 timekeepers consistently billing time to the matter before and during trial. For the 2 week period encompassing trial, Avid’s submission reflects billings of approximately \$65,000.00 to \$85,000.00 in fees per day. During the 16 day period that encompassed trial, Avid’s legal team billed more than \$1,000,000.00. In fact, Avid billed \$2,500,000.00 in the 2 month period leading up to and including trial. AIA objected generally to the excess and waste reflected throughout Avid’s time entries. Although this objection appears to have merit SM finds a request for denial of fees because a party asked for too much

cannot be supported in the law because the request is not outrageous or fraudulent and does not shock the conscience of the SM.

A party, not fraudulently, requesting too much should be penalized only by closer scrutiny and rejection of some of the billings and a recommendation the requesting party pay the SM's fees.

4. AIA complains Avid's time entries reflect blatant overstaffing even on particular tasks. Avid lawyers consistently performed tasks in packs of 3 or 4 lawyers. Avid should reasonably be reimbursed for only 1 lawyer for that time. AIA generally objects to Avid's fee petition in light of the systemic pack billing reflected throughout Avid's time entries. AIA complains Avid's submission reflects are some reports in this matter of 4 or 5 lawyers attending a deposition and there was something like 21 depositions or 22 depositions in this matter.

Avid attempts to justify and explain there were only 12 attorneys from Finnegan who billed more than 200 hours to this matter. None of the other attorneys in excess of the 12 billed more than 43 hours. Counsel argued there was a core group of 12 attorneys from Finnegan, another 3 from Pepper Hamilton and 1 attorney in the UK who billed more than 100 hours to this matter. The justification is this was a very complex case involving issues of patent ownership to be determined under Florida law, under Federal law and under UK law.

AIA complained that the excess which is infused throughout the time entries are for example, summary judgment, \$630,000.00 to research and brief summary judgment motions, motions in limine, over \$300,000.00 to research and brief motions in limine. Just to prepare for Hardy's trial testimony, over \$185,000.00 appeared in the time sheets. AIA further complained Avid charged more than \$200,000.00 in attorney and non-attorney time in preparing trial exhibits.

Upon questioning by the SM, counsel for Avid admitted during the trial there were 4 partners in the room. 3 at counsel table and 2 associates were part of the core trial team as well as paralegals assisting at the trial. These objections have merit and will be discussed further

5. AIA has a general objection to the rates charged by Avid in what it was seeking to recover and not what its actual rates were. The SM finds the hourly rates requested by the Finnegan firm and the Pepper firm were reasonable and within the general guidelines of rates charged by law firms in Philadelphia and nationwide. The SM finds sufficient facts to support the finding the hourly rate is reasonable, based not only on the survey material submitted but the personal experience of 44 years in the Philadelphia market.

6. Avid conducted itself with excess "pack" billing on numerous tasks. AIA complained Avid's lawyers consistently performed tasks in packs of 3 or 4

lawyers. This objection also appeared to have merit when the specific objections are considered.

7. Fees associated with Peter St. George-Hyslop (*St. George-Hyslop*), an expert who never testified. AIA complained *St. George-Hyslop*, identified as a testifying expert, never testified at trial. However, fee submissions referencing *St. George-Hyslop* reflect 883.7 hours of billed time totaling \$425,500.00 in fees. AIA complains Avid's submissions reflect conference calls with the witness attended by as many as 4 Finnegan lawyers.

This objection appears to have merit which shall be discussed along with the specific objections.

8. Avid provides no evidence of the reasonableness of certain of its fees. After discussion and research, the SM finds the rates charged for partners and associates by Avid are reasonable and fair. The SM has reviewed the 2011 and 2013 *AIPLA Economic Survey* to determine whether Plaintiff's counsel's billing rates are within the range of fees charged by other patent lawyers within this district. This objection was overruled as to attorneys and associates. The *AIPLA 2011 survey* satisfies the requirement. The hourly rate of local counsel from Pepper is also reasonable. The hourly rate of foreign counsel Hogan Lovells raises some questions which will be discussed. The rates for Finnegan non-attorney staff amounting to \$1,375,112.50 is questionable and will be discussed later.

9. AIA objects to fees for hours relating to the “paid fact witnesses”. This objection has merit as it appears that there was excessive staffing and participation of attorneys in dealing with these fact witnesses.

10. AIA objects to the non-attorney fees and expenses which were presented in this case. Again, this objection has merit and will be discussed later.

11. AIA objects to fees relating to insufficient time entries. This objection is overruled as a review of the descriptions satisfy a requirement of what work was performed.

12. AIA asserts the relative merits of the parties’ litigation positions do not warrant a substantial fee award. This issue has already been determined by the Court in finding the matter exceptional.

13. AIA asserts Avid should not be rewarded for their “rampant and lucrative patent infringement”. This objection is overruled as this issue has not been litigated and there is no proof there was patent infringement.

14. AIA asserts the parties relative financial conditions weigh against any substantial fee award. This issue was discussed at length during the hearing and AIA could not cite any support for this position and this objection is overruled.

15. AIA complains “a substantial fee award threatens to heap windfalls upon multiple other infringers”. The SM finds the other cases filed by AIA are irrelevant in determining a fee award in the instant case.

16. Plaintiff complains of fees related to the intervention of USF. Without dealing with the issue specifically, fees related to the intervention of USF would be naturally incurred and an important part of the proceeding. This general objection is overruled.

17. Plaintiff objects to fees arising from infringement-related tasks. AIA further contends any recovery by Avid should be reduced in light of the fact some of the fees for which Avid now sees recovery arise from tasks related to the issue of non-infringement. This objection is overruled as issues of non-infringement would be part of the initial approach to the case.

18. Fees duplicative of Lilly's defense of the California action are also objected to. Avid submitted an affidavit to the effect none of the fees incurred in the instant action were duplicative of the California action.

19. Plaintiff objects to Avid's refusal to disclose actual bills and actual payments. Again, the SM in this matter finds the actual bills and actual payments were irrelevant to the issue of reasonableness of the fees sought by Avid.

Specific Objections & Rulings

AIA submitted specific exceptions to particular groups of fees which will be dealt with seriatim. During the course of the September hearings, Avid did not contest the facts of calculations of the hours and dollars which AIA put forth. The SM has carefully reviewed these objections finding merit in many of them. In so

doing the SM will reduce the amount sought by Avid in its total fee request by the total amount of reductions from the subject services of the specific objections which are set forth below.

1. Administrative or technical tasks and other non-attorney functions which Avid seeks recovery in the form of attorney's fees.

a. A review (pleadings/correspondence) for information relating to docketing and update case files. AIA complains more than 900 hours were billed under this narrative by non-attorneys totaling more than \$205,000.00 in fees. One non-attorney entry appears more than 500 times is Avid's time entries, that of non-attorney "Litigation Legal Assistant" on "Case Manager" re: collecting documents. These fees shall be reduced to \$100,000.00

b. Avid seeks over \$67,000.00 in attorneys' fees for over 300 hours of time spent by predominantly non-attorney merely collecting documents. The collection of documents AIA contends is a fundamental administrative task for which Avid unreasonably seeks recovery of attorneys' fees. The SM finds the work performed is clerical in scope and should not be charged and will reduce the request for that amount.

c. Updating data bases, indices and tracking sheets. Avid's time entries reflect over \$58,000.00 in almost exclusively non-attorney time spent opening data bases, indices, tracking sheets and the like. AIA contends the amount

billed under these tasks is unreasonably excessive. The SM finds these services are usually paralegal and the fees are reasonable.

d. AIA complains Avid seeks recovery of \$35,000.00 in billing from Finnegan's non-attorney Case Manager/Training Coordinator for various communications with team. AIA complains the amount billed under these tasks is unreasonably excessive and the SM agrees. The SM agrees and the recovery for the non-attorney "case manager" should be \$17,500.00

e. Assisting in preparation. Avid seeks over \$470,000.00 in non-attorney time for assisting in preparation or assisting with preparation of various documents. The fee sought under this narrative is excessive and the rates for the employees are unexplained. The SM agrees. Most of the work performed is clerical and not deserving of the per hour rates charged. It might be noted here, the rates requested for paralegal assistance were not fully supported. The \$470,000.00 will be reduced to \$156,667.00.

2. AIA complains of tasks related to "paid fact witnesses". Avid billed over 1,500 hours totaling more than \$730,000.00 in fees for work relating to 3 fact witnesses. Exhibit 6 and Exhibit A, B and C of AIA's submission supports these facts. It is the opinion of the SM the amount of time spent on these 3 witnesses was excessive and duplicative to the extent the time was 3 times what would have been reasonable. The response of Avid that these witnesses were important does

not obviate the fact an unreasonable amount of time was spent. There are examples of associates billing 17 and 18 hours per day. This is clear evidence of what is known to billing professionals as “piling on”. It appears some of these witnesses were subject to a total 300 hours of preparation. The amount will be reduced to \$243,000.00.

3. Deficient Time Entries. AIA complains of over \$242,000.00 in billings under the narrative “prepare for trial”. It complains these narratives were insufficient. It is within the realm of common experience of litigators the frenetic activity leading to trial sometimes does not permit a complete narrative on the time billing. The SM finds the narratives sufficient.

4. Time Entries Reflecting Particular Excess.

a. Summary Judgment. AIA complains of billing for summary judgment motions of 1,180 hours totaling \$633,000.00 is clearly excessive. The SM cannot find a justification for this much time and for the number of lawyers who billed to this narrative. Over 12 lawyers billed time dealing with the summary judgment motion. One lawyer billed for over 140 hours preparing for oral argument. After review of the motion, the SM agrees and will reduce the billing to a more reasonable figure of one-third (1/3) the hours to \$210,978.00. A summary judgment is a compilation of uncontroverted facts already discovered or admitted to and an application of the law to those facts. It does not require the number of

lawyers employed or the amount of hours expended to produce a competent product.

b. *Motion in Limine.* AIA objects to the amount of time spent researching and briefing motions in limine. Avid billed 592 hours for total fees of \$308,000.00. Over 9 lawyers billed time to the motions. The SM agrees the time is excessive and duplicative and will reduce the amount to \$158,000.00. It is clear at this stage of the proceeding all the information and research necessary for motions in limine have already been accomplished by the time the preparation of the motions were commenced.

c. *Pretrial Memorandum and Pretrial Hearing.* AIA complains 511 hours totaling \$250,000.00 in fees was billed for preparation of a pretrial memorandum and preparation for the pretrial hearing. Again, the time billed is unreasonably excessive and duplicative of the work which had already been done on the motions and will be reduced by half to \$125,000.00.

d. *Trial Testimony of Paid Fact Witnesses.* AIA complains of 343 hours billed for preparation for trial testimony of a single witness, Hardy, amounting to a request for \$185,031.50. AIA further complains that 200 hours were billed for the deposition and trial testimony of Dr. Goate amounting to a request for \$83,292.00. The SM finds the billing for Hardy is excessive and should be reduced by one-half (1/2) to 172 hours. The billing for Dr. Goate will also be

reduced by one-half (1/2) to 100 hours. There is no relevance of having compensated the witnesses but there also is no explanation for the amount of time spent preparing a witness whose testimony has already been ascertained.

e. Preparing Avid's Trial Exhibit List. AIA complains of billing of over 654 hours preparing Avid's trial exhibit list and exhibits. Avid did not explain the rates and time necessary for this task. The SM agrees and again will reduce the billing for this work by \$100,000.00.

5. Tasks Relating to St. George-Hyslop. AIA complains of tasks related to St. George-Hyslop, a witness identified as a testifying expert who never testified and whose testimony was deemed unnecessary. Avid has billed in excess of 846 hours of attorney time in matters pertaining to this witness amounting to \$414,400.50. The complaint is such fees are unnecessary and or excessive. The SM agrees and will reduce the hours for this witness by two-thirds (2/3) to the amount of \$138,122.50. It is difficult to conceive of the necessity for this much time devoted to an expert witness whose testimony is mostly contained in a report.

6. Infringement Related Tasks. AIA complains of 270 hours billed for time pertaining to issues of non-infringement. It reasons the issues of non-infringement are not before the court. This issue was not tried before the court but always the underlying basis for the action. The SM finds time spent on infringement issues was reasonable.

7. Time Entries Relating to Intervenor USF. AIA objects to time entries dealing with the issue of the intervention of USF amounting to \$128,444.00. The issue of the rights of USF was raised in the trial and was important to the decision of the jury. The SM finds the time billed for USF related tasks is reasonable and this objection is overruled.

8. Trial Attendance. AIA objected to the time billed for trial attendance amounting to \$282,823.00. A review of the fee request reveals 8 different attorneys billed time. Avid offered no reasonable explanation for the involvement of so many lawyers. The SM agrees and would reduce the amount to \$142,823.00 for this issue alone. However, AIA also issues an objection to the \$1,098,654.50 billed during the 16 day period encompassing the trial including this billing for trial attendance. In view of this valid objection, the SM will reduce the total request for this period by \$548,000.00. A check on some of the time billed found some of the lawyers who billed for trial attendance also billed hours for witnesses who did not testify. It is difficult to understand the contribution of this many lawyers to the conduct of the trial. The only conclusion is that a large law firm with the large numbers of lawyers staffing the case were given the privilege of observing the fruit of their labors and did not add measurable value to the proceedings. The obvious overstaffing forces the SM to this conclusion.

9. Pepper Firm. AIA objected to the fees sought for the Pepper law firm which acted as local counsel in this matter. The complaint is the hours for which fees are sought were excessive and unnecessary. This complaint has merit, principally because the trial judge had made it clear the presence of local counsel was not necessary after the initial conferences on the case. There is evidence a partner from the firm attended the trial, sat in the audience, not participating and billed approximately \$3,500.00 dollars for each day. As review of the fees sought for the Pepper firm reveals \$102,316.50 was sought for unnecessary work. The SM recommends the Court award Avid \$164, 527.50 for fees for the Pepper firm.

10. Lovell Firm. AIA objected to the fees sought for the Lovell firm which was retained to explore the United Kingdom connection to the ownership of the patent. Partners billed in excess of \$900.00 per hour while associates billed about \$522.00 per hour. The general surveys of fees in the United Kingdom during the applicable period was \$500.00 per hour for partners and \$350.00 per hour for associates. Avid's request for fees for the Lovell firm should be reduced by 45%. The SM recommends the Court award Avid \$94,663.70.

Summary of Reductions

The SM has taken the total figure requested and will reduce it by the itemized reduction. The result will be the amount which the SM will recommend be awarded to Avid.

Request: \$6,867,219.31

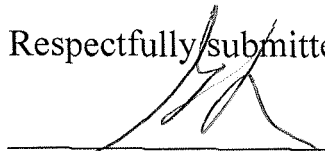
Reductions:

A. Pepper Firm	\$	102,316.50
B. Hogan Lovells	\$	77,452.11
C. Finnegan		
1. Administrative tasks	\$	314,500.00
2. Preparation of witnesses	\$	487,000.00
3. Summary Judgment motions	\$	422,022.00
4. Assisting in preparation	\$	313,333.00
5. Exhibit preparation	\$	100,000.00
6. Motions in Limine	\$	158,000.00
7. Pre-trial memorandum	\$	125,000.00
8. St. George-Hyslop	\$	276,278.00
9. Billing during trial	\$	<u>548,000.00</u>
		<u>\$2,744,133.00</u>
Total Reductions	\$	2,923,901.61

Total Recommended: \$3,943,317.70

The SM recommends to the Court the fees for the SM which amount to **\$63,405.00** should be borne by Avid. The work of the SM was primarily based upon reducing a fee request which was understandably, because of its victory, not seriously reviewed by Avid before its submission. The positive excellent result these law firms achieved for Avid and consequently its parents and affiliates is quite evident as found in AIA's general objections with its request for sympathy. Nevertheless, Avid cannot be further rewarded by an excessive fee award.

Respectfully submitted:


Gene D. Cohen, Special Master